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TEXT BOOKS

Benedict on Admiralty (6th Ed.), Vol. 3, Sec. 435, p. 229 19

IN THE

Supreme Court of the United States

OCTOBER TERM 1950

No. 560

PETROS MALEURIS, CHRISTOS KAKOULIDIS, ATHANASIOS SARDIS, DIDNSIOS MBITROS, ZEPOS VORDONIS, KOST RAMFOS, EFSTRATIOS KORTESIS, DIMITRIOS KALOGERAS DIMITRIOS ASPROGERAKAS, NICKOS SKIAFOS,

Libellants-Petitioners,

VERSUS

ANTHONY G. PAPADAKIS AS OWNER, MICHAEL PILIAROS, HIS AGENT, LEONARDOS CAPPARIS, AS MASTER, ALL BEING INTERESTED IN THE OPERATION OF THE STEAMSHIP "VIRGINIA",

Respondents

On Opposition to Libellants-Petitioners Application for a Writ of Certiorari to the United States Court of Appeals, Fourth Circuit.

MOTION

The respondents, by their attorneys, object and except to the contents of the petition by which the petitioners seek to obtain from this Honorable Court a writ of certiorari directed to the Court of Appeals for the Fourth Circuit, and respectfully move the court to exclude from the petitioners brief, appendix and petition, the portions of said documents incorporating briefs in other cases decided in other courts on entirely different questions of law and fact.

The respondents further respectfully move this onorable Court to exclude those portions of petitioners' brief, appendix and petition for writ of certiorari incorporating magazine articles and other such irrelevant and incompetent material which are not parts of the record in this case.

RESPONDENTS BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. STATEMENT

As petitioners have failed to file copies of the printed record in compliance with the requirements of Supreme Court Rules 38(3), the respondents print as their appendix those portions of the record considered material to the issues in this petition. References therefore are made to the appendix of this brief instead of to the record.

The petition for a writ of certiorari filed herein by the petitioners seeks *for the second time* to have this case reviewed by this Court. The first petition seeking a writ was denied by this Court on December 5, 1949 (338 U.S. 894; 70 S.Ct. 241). Petition for re-hearing was denied by this Court on January 9, 1950 (338 U.S. 939, 70 S.Ct. 345).

This suit was originally instituted on April 2, 1948, by the filing of a libel in the United States District Court for the Eastern District of Virginia, on behalf of ten seamen against the Steamship VIRGINIA and her owners, master and operators. The libellants, petitioners herein, claimed extra pay, damages for conspiracy and certain other indemnities and benefits alleged to be due them under the Greek Law, as well as waiting time under 46 U.S.C.A. Section 596 et seq. Subsequently the petitioners claimed certain advances under Title 46 U.S.C.A. 599, and on the day of the origial trial of this case in the District Court the petitioners filed a supplemental libel claiming conspiracy, illnesses, etc.

On July 5, 1948 the United States District Court rendered its memorandum opinion (1948 A.M.C. 1721) allowing advances on the last voyage during which the libellants were employed aboard the vessel, and denying all of the other claims on behalf of the seamen. These awards were paid from the funds which respondents had deposited in the registry of the Court, and the balance of the funds on deposit were repaid to the respondents.

Cross-appeals were taken by the parties to the United States Court of Appeals for the Fourth Circuit. On May 17, 1949 the Appellate Court rendered its decision (175 F. (2d) 730), affirming the District Court on all points except as to the claims for advances made to the petitioners in contravention of Title 46 U.S.C.A. Section 599, on voyages prior to January 1948. Only four the libellants, Sardis, Ramfos, Asprogerakas and Vordonis, were involved in these claims for advances prior to January 1948.

As to these advances the Court of Appeals remanded the case to the District Court to make appropriate awards to the seamen.

On June 22, 1949, respondents re-deposited in the registry of the District Court the amounts returned to them by that Court's decree of July 28, 1948. Petition for a re-hearing was denied by the Circuit Court of Appeals on July 22, 1949 (175 F. (2d) 734). The first petitions for writ of certiorari referred to above were then filed and denied by this court on December 5, 1949. Application for re-hearing on behalf of the libellants was denied on January 9, 1950.

Upon the action of this Court denying petition for writ of certiorari, the case was submitted to the United States District Court in accordance with the mandate of the Court of Appeals for the Fourth Circuit.

On April 14, 1950 the District Court rendered its memorandum opinion (1950 A.M.C. 1158), and final

decree was entered on June 1, 1950 awarding Sardis, Ramfos, Asprogerakas and Vordonis the illegal advances disclosed by the evidence, and denying all of the other claims in accordance with the decision of the Court of Appeals (App. 3).

Specifically did the District Court deny penalties under Title 46 U.S.C.A. Section 596 et seq.

From this decision of the District Court the libellants again took an appeal to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals rendered its decision on October 30, 1950 (184 F. (2d) 716), correcting a clerical error resulting in an increase of the award to the libellant Sardis in the amount of $97.50, and affirming in all other respects the decree of the District Court.

Libellants filed a petition for re-hearing in the Appellate Court on November 20, 1950 which was denied on November 21, 1950. A second petition for re-hearing was filed on behalf of the petitioners and was denied on December 28, 1950.

In view of the failure of the petitioners to comply with the appropriate rules and obtain a stay of the enforcement of the judgment of the Appellate Court, mandate was returned to the District Court and a final judgment was entered by the District Court carrying out this mandate on January 9, 1951 (App. 1).

Petitioners seek a writ of certiorari to have this Court review the decision of the Court of Appeals for the Fourth Circuit.

II. ARGUMENT

1. The Petitioners Have Failed to Present Valid Reasons for Invoking the Jurisdiction of the Supreme Court of the United States.

The required statement disclosing the basis upon which it is contended that this Court has jurisdiction to review the judgments and decrees of the Court of Appeals and the District Court, with the exception of a reference to Title 28 U.S.C.A. Section 1254, is entirely lacking (Petition for writ, page 5).

In any event, the petitioners have failed to present even one valid reason why they should be entitled to invoke the jurisdiction of the Supreme Court of the United States of America.

For the second time in less than 18 months the petitioners seek the decision of this Court on questions of law which are *not in conflict* among the various appellate courts, and on questions of fact which have been considered and determined in this case by the District Court and upheld by the Fourth Circuit (The VIRGINIA, 1948 A.M.C. 1721; 1950 A.M.C. 1158). In fact, petitioners even adopt their previous petition for writ of certiorari presented to this Court in 1949 as well as the brief in support thereof (Petition for writ, page 5).

It is submitted that the findings of the District Court are amply supported by the evidence and the voluminous record in this case. This fact is further verified by the two decisions of the Court of Appeals for the Fourth Circuit.

The VIRGINIA (1949), 175 F. (2d) 730

The VIRGINIA (1950), 184 F. (2d) 716

2. The Petitioners Are Not Entitled to Double Wages Under Title 46, U.S.C.A., Section 596, Et Seq.

At page 7 of their petition for writ of certiorari the petitioners ask this court to consider the question of the allowance of waiting time under Title 46 U.S.C.A. Sec. 596 et seq. This section provides, in substance, that

the master or owner of any vessel making foreign voyages shall pay seamen their wages within 24 hours after the cargo has been discharged, or within 4 days after the seamen have been discharged, whichever happens first. The portion of the Act upon which the petitioners rely reads as follows:

> ". . . . Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned *without sufficient cause* shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beond the respective periods. . . ." (Italics ours).

Significantly, the petitioners fail to state that both the District Court and the Court of Appeals decided *as a matter of fact* that in this case there was no withholding without sufficient cause.

Concerning this question the Court of Appeals stated as follows (184 F. (2d) 716, 718):

> "The contention that the appellants are entitled to 'waiting time' under the Statute is manifestly without merit since there has been no such withholding of wages without sufficient cause as to render the waiting time statute applicable. We dealt with this question in our former opinion. The delay which has since supervened has been the result of delays in litigation attributable as much to appellants as to their adversaries."

See also Finding of Fact No. 6 (App. 6).

Petitioners also urge that the Court of Appeals held that all violations of 46 U.S.C.A. Section 599 are *per se* withholdings of wages for sufficient cause. This is *not* the case. On the first appeal the court stated as follows (175 F. (2d) 730, 734):

> "We cannot say that the delay which has occurred with respect to this portion of the wages (advances) was 'without sufficient cause' within

the meaning of the statute. The District Judge was of the opinion that the double wage provision of the statute has no application where, as here, the entire wage has been paid when the advances are considered as payments. Whether this is correct, or whether the view should be taken that the statute requires the prompt payment of the balance due on wages when the advances are eliminated from considerations with double wages under the statute for delay in paying such balance, is not necessary here to decide, since we are of the opinion that the delay was not 'without sufficient cause' even if the double wages provision of the statute be applicable."

From this language it is obvious that the Fourth Circuit *did not* conclude that *all* violations of 46 U.S.C.A. Section 599 are withholdings of earned wages for sufficient cause, but concluded that the evidence in *this case* does not connote arbitrary or willful refusal or failure on the part of the respondents.

At page 129 of his deposition, Capparis, Master of the Steamship VIRGINIA, testified as follows:

"(By Mr. Morewitz:)

Q. And you made the advance prior to the time that he earned the wages?

A. No, it was when the steamer starts a voyage, not from the United States, we always give an advance and when he received the advance he was a regular member of the crew.

Q. But that was before he earned the money?

A. According to the Greek law, everybody signs on board the Greek steamer, he receives an advance.

Q. But he got advances in New York before he earned the money?

A. Everybody that signs on board the Greek steamer he has nothing to receive. The day he signs on the ship he has no wages to him and according to the Greek law he receives an advance to send to his family.

Q. But if that is in violation to American Law that is none of your business?

* * * * *

A. I was never advised from any authorities in the United States that I have to regulate my advances according to the American law."

This clearly shows that the master of the VIRGINIA was following the requirements of the Greek law. This view was shared by the libellant seamen themselves, who, in their original libel, never even made a claim for "advances".

At page 244 of his deposition, Vordonis testified as follows:

"(By Mr. Johnston:)

Q. When you came aboard the VIRGINIA do you deny that you went to the captain and pleaded with him to give you advances?

* * * * *

A. I did not beg him but it is the Greek law to receive advances.

Q. And you felt that you were entitled to advances when you went aboard. Is that correct?

A. I needed the money and I received the advances."

Petitioners, erroneously, allege at page 12 of their petition that the amounts found to be due the petitioners by the courts below are still being withheld at the instance of the respondent shipowners.

The fact is that after the memorandum opinion of the District Court was rendered on April 14, 1950, it was on the *motion of the respondents* that the court finally entered a decree on June 1, 1950, in spite of the fact that the money pertaining to advances was on deposit in the District Court and had been on deposit since June 1949.

The petitioners submitted no findings of fact or decree to carry the memorandum opinion of the District Court into effect.

On January 9, 1951, after the return of the mandate of the Fourth Circuit, it was again on the motion of respondents, that the District Court entered a final decree directing payment of all sums awarded to the petitioners (App. 1).

(A) No Conflicts of Decisions Exists

It is weakly contended that the Fourth Circuit's decision in this case is in conflict with the 1st, 2nd, 4th and 5th Circuit decisions in the following cases:

Mavromatis v. United Greek Shipowners Corp., (C.C.A. 1, 1950), 179 F. (2d) 310

Venides v. United Greek Shipowners Corp., (C.C.A. 2, 1948), 168 F. (2d) 681

The SONDERBORG (C.C.A. 4, 1931), 47 F. (2d) 723

South Pacific Co. v. Hair (C.C.A. 5, 1928), 24 F. (2d) 94.

Briefly referring to these decisions, the *Mavromatis* case was decided in January 1950, and cites the VIRGINIA (Supra) as authority for allowing advances on voyages previous to the last voyage on which seamen were aboard. This was a case where penalties were

applied for unlawful deductions and withholdings of compulsory savings. The opinion in that case concluded that the evidence *showed* the withholding "without sufficient cause." The *Mavromatis* case and The VIRGINIA case recognize and support the same principle of law, and there is no conflict in the two decisions.

The *Venides* case decided in 1948 (Supra) applied penalties for the deduction and withholding of compulsory savings. At page 683 the Court stated:

> "As defendant's officials knew of these decisions (holding compulsory savings deductions improper) defendant, if it was to avoid liability . . . had a heavy burden to show that the refusal to pay had sufficient cause. Nevertheless, the defendant did not offer any testimony of either master or of any other of its representatives to the effect that the refusal was based on a belief that there was some doubt because of the agreement."

The decision in the *Venides* case was based partially on the decision of the 2nd Circuit in the case of *Glandzis v. Callinicos* (C.C.A. 2, 1944), 140 F. (2d) 111, where it was decided that war bonuses were wages and that deductions for compulsory savings were not lawful under 46 U.S.C.A. Section 597. It must be noted that in the Glandzis case the question of double pay provisions of 46 U.S.C.A. 596 *were considered and denied,* the court saying at page 115 of the opinion:

> "It is not every refusal which grounds the penalty. It is arbitrary, unwarranted and unjust conduct which is sought to be penalized."

Both the Venides and Glandzis cases are entirely in accord with the 4th Circuit decision in The VIRGINIA—it is but the factual difference which distinguishes the cases.

The SONDERBORG (Supra) involved the action of the master of that vessel who, without notice to the seamen, deducted an arbitrary sum from their wages. Waiting time was allowed because *as a matter*

of fact, "the payment was withheld without 'sufficient cause' and was in no reasonable degree morally justified" (47 F. (2d) 723, 728).

The case of *South Pacific Steamship Co. v. Hair* (Supra), involved Federal Statute 46 U.S.C.A. 222, which is not now and never has been considered or urged in this case. Questions not urged or considered in the Court of Appeals will not be considered and passed upon by the Supreme Court.

Hynes v. Grimes Packing Co., et al, 337 U.S. 86; 69 S.Ct. 968.

Rather than a showing of conflict in the Circuit decisions, there appears to be a singular unanimity in the Appellate holdings on the point.

3. The District Court Properly Construed the Circuit Court's Mandate and Correctly Calculated the Illegal Advances Made to Petitioners.

The first opinion of the United States Court of Appeals for the Fourth Circuit in this case and the mandate of that Court directed the District Court to ascertain the illegal advances made by respondents to petitioners, and award judgment for the seamen to the extent thereof. *The VIRGINIA* (C.C.A. 1949), 175 F. (2d) 730, 734:

> "It follows that the decrees appealed from will be affirmed except as to the claim for wages on prior voyages covered by unlawful advances made in contravention of 46 U.S.C.A. Sec 599; and as to these they will be remanded to the Court below with direction to award the balance due on the wages of such voyages when advances made in the United States contrary to law are eliminated."

The only question remaining in the VIRGINIA case upon its remand to the District Court after first

appeal, was a determination of the amount of illegal advances made to the four petitioners Sardis, Ramfos, Asprogerakas and Vordonis. As stated above the amount of $1900.00 had been redeposited in the registry of the District Court by the respondents to await this determination. In order to make this determination the District Court had to decide what illegal advances had been made.

(A) The Respondents Have the Right to Deduct Greek Withholding Taxes

The mere fact that the respondents raised the question of taxes as one of the points in their cross-petition for rehearing in the Court of Appeals, and the further fact that the petition and cross-petition were denied, does not indicate an adverse decision on the point by the Appellate Court. The District Court stated as follows (1950 A.M.C. 1158, 1159):

> "The court does not construe the opinions of the Court of Appeals in this case as passing upon the questions of the right to withhold taxes."

Obviously this construction was correct as it was affirmed in every respect by the 4th Circuit on the second appeal.

Certainly the contention on behalf of petitioners, at page 7 of the petition, that denial of certiorari by this court constituted a decision on the question of the right to withhold taxes is without validity. Denial of certiorari by the Supreme Court of the United States imports no expression of opinion on the merits.

Sunal v. Large, 332 U.S. 174, 181; 67 S.Ct. 1588

House v. Mayo, 324 U.S. 42, 48; 65 S.Ct. 517.

Since the original trial of the VIRGINIA case in the United States District Court, several of these "Greek Seamen" cases have been tried in the Virginia Courts where credits for taxes have been uniformly allowed

to the respondents. *Delatolos v. Andreadis et al.* (Cir. Ct. City of Newport News, unreported, Feb. 1949).

Accordingly it was proper for the District Court to consider the question of withholding taxes in determining the amount of the illegal advances.

On March 12, 1951 the Supreme Court of Appeals of Virginia rendered its decision in the case of *Neapolidis v. Theofana Maritime Co.,* in which it sustained the Circuit Court of the City of Newport News and refused to allow Greek seamen to recover taxes which had been withheld from their wages during the time they were aboard the Greek steamship MEANDROS. The Virginia Supreme Court quoted, approved and adopted the opinion of the Fourth Circuit in The VIRGINIA (Supra) affirming the Greek owners' right to deduct withholding taxes from the wages of Greek seamen. This decision has not been reported at this writing, but copies of the opinion have been furnished counsel.

In seeking a credit for taxes on the wages against which the respondents gave advances, the respondents seek nothing to which they are not normally entitled. The seamen are losing nothing to which they would have been entitled in the normal course of events. The fact is, these taxes were not even a part of the compensation which the petitioners could expect to receive for their services.

These withholding taxes must be carefully distinguished from the compulsory savings involved in *Venides v. United Greek Shipowners Corp.* (C.C.A. 2), 168 F. (2d) 681, and *Mavromatis v. United Greek Shipowners Corp.* (C.C.A. 1), 179 F. (2d) 310. In those cases the respondents withheld "compulsory savings" which were deposited in a London bank for the seamen and were not to be withdrawn until after the signing of an armistice between Great Britain and Germany, or after the liberation of Greece.

The citizens of this country are entirely conversant

with the withholding taxes levied by the United States Government. The District Court stated as follows (1950 A.M.C. 1158, 1159):

> "It appears that the Bureau of Internal Revenue has regularly, in this country, collected Federal income taxes from seamen by the withholding process. This administrative practice has been of long standing and apparently has not been seriously questioned. Indeed it has been expressly sustained. *U. S. v. Johnson,* 1947 A.M.C. 765; 160 F. (2d) 789, affirmed in part and reversed in part, 333 U. S. 46, 1948 A.M.C. 218. Evidently it has been treated as a deduction 'expressly authorized by statute.' *Shilman v. U. S.* (2d Cir.), 1948 A.M.C. 19, 164 F. (2d) 649. No reason appears that the Greek tax statute should not be recognized. Obviously it is in accord with the policy of the United States."

The Court of Appeals for the Fourth Circuit in affirming the lower court stated as follows (184 F. (2d) 716, 719):

> "Complaint is made, too, because deduction was allowed on account of taxes required to be deducted by the Greek Government from the wages of seamen; but we know of no principal of law which would justify our ignoring such a requirement of the law of a foreign government with respect to the rights of its nationals serving as seamen on a vessel flying its flag and subject to its jurisdiction. The judge below relied upon the wage accounts and portage bills as evidence of the amount of the tax; and there is nothing to justify us in setting aside his finding with regard thereto."

The factual question of whether the respondent deducted a uniform and just amount for withholding taxes was for the determination of the District Court on the evidence and record in this case. The vessel's portage bills and wage accounts of the seamen show a uniform deduction approximating 8-1/3% or .0835.

(Finding of Fact Nos. 7 and 8, App. 6; Wage Accounts, App. 8-14).

Captain Capparis, in his deposition, refers to the fact that the taxes are shown on the wage accounts (Dep., L. Capparis, p. 106):

"(By Mr. Morewitz:)

Q. And you see here an imprint showing less deductions, advances at the beginning of the voyage and advances taken during the voyage, did you not?

A. Yes. The payroll that my company hands me, they state the salary, the monthly wages, the monthly taxes. Then they state the balance, clear balance, whatever is due. Next to it there is a place where to sign where he received his money. That's for the advances. I can keep them in any kind of a note book that I want to keep them."

The seamen themselves have never questioned the right of the respondent owner to deduct the taxes in dispute. The testimony in this case is completely lacking in any reference by the seamen to the effect that the amounts deducted were excessive or were not actually paid by the respondents to the Greek Government. The evidence shows in this case that there were accepted or settled accounts (App. 8-14); the burden of going forward with the evidence to override the accounts is with the party seeking to contest the same.

The SAMUEL E. SPRING, 27 F. 764.

In the similar case of *Loucopantis et al v. OLYMPOS* (C.C.A. 4, 1949), 177 F. (2d) 785, 788 the Court stated:

"The contentions of the libellants that they were not paid for extra work performed and that improper deductions from their wages were made for pension fund contributions and taxes are not supported by any testimony on the record."

The petitioners urge that the decision in the VIRGINIA case is in conflict with the case of *Shilman v. U. S.* (C.C.A. 2), 164 F. (2d) 649. That case concerns the withholding of a portion of seamen's wages to pay a fine previously levied by a special court martial. This was, in fact, an attachment and arrestment of money which the seaman could expect to receive for his services. Withholding taxes are a part of the earnings which the employees of this generation never expect to receive in kind, if at all.

The case of *Mavromatis v. United Greek Shipowners Corp., Glandzis v. Callinicos* and *Venidis v. United Greek Shipowners Corp.,* dealing with compulsory savings deducted from seamen's wages are not in point.

Alaska Steamship Company v. Mullaney (C.C.A. 9, 1950), 180 F. (2d) 805, 814, upheld the right of the territory of Alaska to apply a withholding tax to the wages of seamen. The court stated at page 814:

> "The withholding device, though but a recent contrivance for use in collecting from wage earners, is so efficient for this purpose as to have become an essential aspect of any modern income tax law. When Congress, as we have said, occupied the field of legislation relating to the protection of seamen in the collection of their wages, it was not then entering any field relating to the liability of seamen for taxes, or the means of collecting such taxes. We deal here with a different field than that covered by Congressional enactments. The payment of taxes is not included in those things from which Congress undertook to protect seamen."
>
> *Standard Dredging Company v. Murphy,* 319 U. S. 306, 309; 63 S. Ct. 1067, 1068.

(B) The Evidence Shows That No Advance Was Made to Sardis in August 1947

The petitioners allege that the court below wholly

ignored $102.10 advanced to Sardis on future earnings at Philadelphia on or about August 5, 1947.

The interpreter's translation of the wage account of Sardis for the month of August (App. 8) shows a payment during that month but does not include the time and place of payment.

The Court below did *not* ignore this payment but specifically stated:

> "The claims of Sardis for advances during the months of August and November 1947 are disavowed by Sardis in his testimony." (Findings of Fact No. 5, App. 6).

This finding of fact is supported by the evidence. Quoting from the deposition of Sardis, taken on April 13, 1948, page 318:

"(By Mr. Morewitz:)

Q. I tender you some account sheets which were given you, that were paid you on board the ship and ask you to point out the advances made to you.

* * * * *

A. September, $200.00.

Q. Where and when?

A. Philadelphia. I don't remember the exact date.

Q. What other deductions and other advances?

A. Then for the month of January and February $200.00 at Newport News; October $200.00.

Q. Where?

A. Newport News. November and December is the settlement of accounts. There is no advances.

Q. I ask you to examine your account carefully and make sure there was none in November.

Page 319:

A. There was non for November and December. $102.10 the last month we were here.

Q. What year?

A. 1948.

* * * * *

Q. I ask you to look at this again and see if there isn't a deduction down there for the month of August.

* * * * *

A. There is no August.

Moreover the testimony of Captain Capparis bears out the statement of the libellant Sardis that there was no advance during the month of August 1947 (App. 15-16).

Admissions in the testimony of a party to a proceeding have the utmost probative value in favor of the adverse party. The majority opinion in the United States is that such admissions are conclusive against the party making them.

Massie v. Parker (C.C.A. 6), 128 F. (2d) 99

Mitchell v. Swift & Co. (C.C.A. 5), 151 F. (2d) 770.

The Virginia Supreme Court has clearly stated the rule in the case of *Crew v. Nelson* (1948), 188 Va. 108, 49 S. E. (2d) 326, 328:

> ". . . . This Court, beginning with the earlier case of Virginian Railway & Power Co. v. Godsey, 117 Va. 167, 83 S. E. 1072, and continuing down to the present time has consistently held that where a litigant testifies unequivocally to facts within his knowledge and upon which is case turns, he is bound thereby, and cannot rely upon other evidence in conflict with his own testimony to strengthen his case."

4. The Awards of Costs of the Courts Below Were Proper and Are Not Appropriate Questions for Review by This Court

The District Court has in each instance taxed the appeal costs in accordance with the mandate of the Fourth Circuit. Upon the petitioners' failure to obtain a stay of execution pending this application for a writ, the District Court entered a final decree on the mandate of the Fourth Circuit which made the following provisions as to costs:

> "Costs shall be taxed as follows: The costs which accrued prior to the first appeal shall be paid one-half by the libellant-seamen, and one-half by the respondents; the costs which accrued on the first appeal shall be paid by the respondents; the costs which accrued on the second appeal shall be paid by the libellant-appellants" (App. 2).

The principal is firmly established that the award of costs is entirely within the sound discretion of the Court making the award.

The MAGGIE J. SMITH, 123 U. S. 349; 8 S. Ct. 159

The HUNSTANWORTH (E.D.N.Y.), 4 F. Supp. 656.

Benedict on Admiralty (6th Ed.), Volume 3, Sec. 435, states the rule as follows, p. 229:

> "Costs are always in the discretion of the court . . . (p. 230). The court may decree for a party to the full amount claimed and yet award costs against him or divide the costs or refuse costs altogether. The disposition of the costs of a suit is often used by the court as a means of amercing a party for misconduct or for inducing unreasonable and unnecessary litigation."

In this case the District Court has not yet taxed the various detailed items of costs, but has set forth the

manner in which these items will be taxed at the conclusion of the litigation.

III. CONCLUSION

The respondents submit that the decisions of the Court of Appeals for the Fourth Circuit and the District Court for the Eastern District of Virginia are eminently correct. The many and varied claims asserted by the petitioners were based largely on questions of fact which the courts below resolved in favor of the respondents; the decisions of the Courts below are based on ample substantial evidence. Moreover, petition for writ of certiorari has previously been denied in this case and nothing substantially new or different is presented in this application.

There is no real conflict of authority as to the basic points involved, no new or novel questions needing further clarification, and no question of general interest warranting the granting of a writ of certiorari in accordance with the libellants petition. For these reasons the decrees of the Court of Appeals for the Fourth Circuit and the District Court should not be disturbed and a writ of certiorari should be denied the libellants.

Respectfully submitted,

LEON T. SEAWELL,
THOS. M. JOHNSTON,
Proctors for Respondents.

Norfolk, Virginia
March 17, 1951

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APPENDIX

U. S. DISTRICT COURT

Eastern District of Virginia

PETROS MALEURIS, ET AL.,

v.

ANTHONY G. PAPADAKIS, ET AL., In Admiralty No. 95

THE S.S. VIRGINIA

DECREE OF JANUARY 9, 1951

This cause came on this day to be heard upon the Mandate of the United States Court of Appeals for the Fourth Circuit, received by this Court on December 1, 1950, and was argued by proctors.

And it appearing to the Court from the said Mandate that the final decree heretofore entered by this Court on June 1, 1950, has been modified to the extent that the amount decreed to the libellant-appellant, Athanasios Sardis, is increased by the sum of $97.50, the Court doth so DECREE.

And it further appearing from the said Mandate that the said final decree of this Court of June 1, 1950, denying all of the other numerous claims and motions of the libellant-seamen for bonuses, extra pay, conspiracy to discharge, indemnities for discharge, repatriation, false entries in seamen's books, withholding of personal property, false arrests, illnesses, penalties, and double pay for withholding wages, etc., was affirmed and approved, it is so DECREED.

And it appearing that there is still in the registry of the Court, awaiting the disposition of this case, the sum of $1900.00, it is further ADJUDGED, ORDERED and DECREED that the Clerk do check upon the funds now on deposit in the registry of the Court to the credit of this cause as follows:

> To Messrs. Morewitz & Morewitz, proctors of record for all of the libellants, in payment of the amounts awarded the libellants, Sardis, Ramfos, Asprogerakas, and Vordonis, on account of illegal advances received by them prior to January of 1948.

Sardis	$ 374.38
(Being the $276.88 formerly allowed, plus $97.50 additional allowance in accordance with the Mandate of the Court of Appeals)	
Ramfos	472.95
Asprogerakas	229.13
Vordonis	467.81
TOTAL	$1544.27

To Messrs. Hughes, Little & Seawell, proctors of record for the SS VIRGINIA, the balance of the amount on deposit, or $355.73.

And it appearing to the Court that there is nothing further remaining to be done in this cause, it is ORDERED that the cause be stricken from the docket of the Court and that all bonds and stipulations heretofore given or filed by any of the parties herein be, and the same hereby are, released and cancelled.

Costs shall be taxed as follows: The costs which accrued prior to the first appeal shall be paid one-half by the libellant-seamen, and one-half by the respondents; the costs which accrued on the first appeal shall be paid by the respondents; the costs which accrued on the second appeal shall be paid by the libellant-appellants.

(sgd) ALBERT V. BRYAN
United States District Judge.

U. S. DISTRICT COURT

Eastern District of Virginia

PETROS MALEURIS ET AL.,

v.

ANTHONY G. PAPADAKIS ET AL., In Admiralty No. 95
THE S.S. VIRGINIA

DECREE OF JUNE 1, 1950

This cause came on to be heard, after having been remanded to the United States District Court by the Court of Appeals for the Fourth Circuit, on the question of amounts actually received by the libellants in controvention of Title 46 USCA Section 599, the "Advance Statute", and on the further motions of the libellants, Malevris, Sardis, Ramfos, Asprogerakis and Vordonis for summary judgments.

And the Court being of the opinion for reasons stated in its memorandum of April 14, 1950, filed with the papers as a part of the record in this case, that the various disputes should be determined as follows:

1. The claim of the libellant Petros Malevris for further indemnities under the Greek law should be denied.

2. The libellants Sardis, Ramfos, Asprogerakis and Vordonis were advanced the following sums in controvention of Title 46 USCA Section 599:

Sardis	$302.10
Ranfos	516.03
Asprogerakis	250.00
Vordonis	510.43

3. From the amounts so advanced to the said libellants the respondents are entitled to a credit for the deductions made for taxes in the following amounts:

Sardis	$ 25.22
Ramfos	43.08
Asprogerakis	20.87
Vordonis	42.62

4. The libellants are not entitled to recover their claims for waiting time under Title 46 USCA Section 596, as the respondents have not either before or after the mandate of the Court of Appeals for the Fourth Circuit withheld the advances claimed "without sufficient cause",

DOTH SO DECREE.

And it appearing to the Court that the respondents have heretofore re-deposited the sum of $1900.00 in the Registry of this Court to take care of any judgment to be rendered in accordance with the mandate of the Court of Appeals, it is ADJUDGED, ORDERED and DECREED that the Clerk do check upon the funds now in the Registry of the Court to the credit of this cause as follows:

To Messrs. Morewitz & Morewitz, as proctors of record for each of the libellants, Sardis, Ramfos, Asprogerakis and Vordonis, in payment of the amounts awarded the said libellants on account of illegal advances received by the libellants prior to January of 1948.

Sardis	$ 276.88
Ranfos	472.95
Asprogerakis	229.13
Vordonis	467.77
	$1446.77

To Messrs. Hughes, Little & Seawell, as proctors of record for the Steamship VIRGINIA, the balance of the amount on deposit, or $453.23.

And it appearing that there is nothing further remaining to be done, it is ORDERED that this cause be stricken from the docket of the Court and that all bonds and stipulations heretofore given by any of the parties be, and the same hereby are, released and cancelled.

Costs shall be taxed as follows: The costs which accrued prior to the appeal shall be paid one-half by the libellants and one-half by the respondents and the costs which accrued on appeal shall be paid by the appellees.

(sgd) ALBERT V. BRYAN
United States District Judge.

Alexandria, Va.
June 1st, 1950

IN ADMIRALTY NO. 95

FINDINGS OF FACT AND CONCLUSIONS OF LAW (OF JUNE 1, 1950)

From the evidence and record in this case the Court announces the following findings of fact:

1. Libellant, Petros Malevris, is not entitled to the recovery of further indemnities under Greek law, Greek Collective Agreements, or the Greek Commercial Code, for discharge without cause. His claim has been heretofore rejected by this Court and by the Court of Appeals for the Fourth Circuit as having been determined and settled.

2. The claims of the other libellants, for bonuses and/or indemnities under the Greek law, Greek Collective Agreements, and Greek Commercial Code, have been previously considered and rejected by this Court and the Court of Appeals for the Fourth Circuit.

3. The four libellants, Sardis, Ramfos, Asprogerakis and Vordonis have received the following amounts in advances in the United States on account of wages earned prior to January, 1948:

SARDIS		
September, 1947, at Philadelphia	$102.10	
October, 1947, at Philadelphia	200.00	$302.10
RAMFOS		
August, 1947, at Philadelphia	$152.10	
September, 1947, at Philadelphia	213.93	
October, 1947, at Newport News	150.00	$516.03
ASPROGERAKIS		
September, 1947, at Philadelphia	$100.00	
October, 1947, at Newport News	150.00	$250.00
VORDONIS		
August, 1947, at Philadelphia	$152.10	
September, 1947, at Newport News	258.33	
October, 1947, at Newport News	100.00	$510.43

None of the other libellants received advances prior to January, 1948.

4. All other advances made by the respondents to the libellants have been paid.

5. The claims of Sardis for advances during the months of August and November of 1947 are disavowed by Sardis in his testimony.

6. The failure on the part of the respondents to repay the libellants the advances which they claim has not been "without sufficient cause." Nor has there been any unreasonable delay since the mandate of the Court of Appeals for the Fourth Circuit, or "failure without sufficient cause" to repay the said libellants the amounts of advances made in contravention of Title 46 U.S.C.A., Section 599.

7. The accounts and portage bills show withholding taxes on the amounts advanced to the libellants at the rate of .0835 per cent.

8. The deduction of taxes is a uniform and just obligation, the exact amounts of which is known by the seaman before signing on board. The seaman is at no time entitled to receive these taxes, and therefore the actual amount of the said taxes cannot be considered to be an "advance" within the meaning of the statute.

9. The following amounts should be allowed as a credit to the respondents for the deduction of taxes:

Sardis	$25.22
Ramfos	43.08
Asprogerakis	20.87
Vordonis	42.62

From the foregoing findings of fact the Court announces the following:

CONCLUSIONS OF LAW

1. The libellants, Petros, Malevris, is not entitled under the law to further indemnities.

2. The respondents have not withheld repayment of

advances, either before or after the mandate of the Court of Appeals for the Fourth Circuit "without sufficient cause."

3. The respondents are entitled to deduct withholding taxes from the amounts of the advances which they are obligated to pay to the libellants.

4. The libellants, Sardis, Ramfos, Asprogerakis and Vordonis, are entitled to receive the following sums as advances paid by the respondents in contravention of Title 46 U.S.C.A., Section 599:

Sardis	$302.10, less $25.22, or $276.88
Ramfos	$516.03, less $42.08, or $472.95
Asprogerakis	$250.00, less $20.87, or $229.13
Vordonis	$510.43, less $42.62, or $467.81

5. Of the sum of $1,900.00 which was re-deposited in this Court on June 22, 1949, the respondents are entitled to receive payment of the sum of $453.23.

(s) ALBERT V. BRYAN,
United States District Judge.

WAGE ACCOUNTS

SARDIS—Sailor, Rate of wages £28–0–0 per month

AUGUST 5–31	£24–05–04	
Withholding	1–19–08	
	£22–05–08	
£22–05–08 =		$ 89.13
Overtime		24.00
		$113.13
Less: Advance	$102.10	
Cigarettes	9.36	111.46
	Remainder Due	$ 1.67
SEPTEMBER	£28– 0– 0	
Withholding	2– 6– 8	
	£25–13–04	
£25–13–4 =		$102.70
Overtime		6.00
		$108.70
Less: Advance	$200.00	
Cigarettes	8.64	208.64
	Overdrawn	$ 99.94
OCTOBER	£28– 0– 0	
Withholding	2– 6– 8	
	£25–13– 4	
£25–13–2 =		$102.60
Overtime		8.00
Extra		15.00
		$125.60

Less: Balance owing	$ 99.94	
Advance	200.00	299.94
	Overdrawn	$174.34
NOVEMBER	£28– 0– 0	
Withholding	2– 6– 8	
	£25–13– 4	
£25–13–4 =		$102.60
Overtime		25.60
		$128.20
Balance owing from Oct.		174.34
	Overdrawn	$ 46.14
DECEMBER	£28– 0– 0	
Withholding	2– 6– 8	
	£25–13– 4	
£25–13–4 =		$102.60
Overtime		.40
		$103.00
Less: Cigarettes	$ 9.60	
Balance owing	46.14	55.74
Balance of Wages Paid		$ 47.26

Received Payment
(sgd) Illegible

RAMFOS—Sailor, Rate of wages £28–0–0 per month:

AUGUST 5–31	£24– 5– 4
Withholding	1–19– 8
	£22– 5– 8

£22–05–08 =		$ 89.13
Overtime		8.40
		$ 97.53
Less: Advances	$152.10	
Cigarettes	9.36	161.46
	Overdrawn	$ 63.93
SEPTEMBER	£28– 0– 0	
Withholding	2– 6– 8	
	£25–13– 4	
£25–13–4 =		$102.70
Overtime		4.40
		$107.10
Less: Advances	$213.93	
Cigarettes	8.64	222.57
	Overdrawn	$115.47
OCTOBER	£28– 0– 0	
Withholding	2– 6– 8	
	£25–13– 4	
£25–13–4 =		$102.60
Overtime		9.60
Extra		15.00
		$127.20
Less: Advance	$150.00	
Balance overdrawn in Sept.	115.47	265.47
	Overdrawn	$138.27
NOVEMBER	£28– 0– 0	
Withholding	2– 6– 8	
	£25–13– 4	

£25–13–4 =		
Overtime		$102.60
		7.20
		$109.80
Balance overdrawn in Oct.		138.27
	Overdrawn	$ 28.47
DECEMBER		
Withholding	£28– 0– 0	
	2– 6– 8	
	£25–13– 4	
£25–13–4 =		
Overtime		$102.60
		25.60
		$128.20
Less: Cigarettes	$ 9.60	
Overdrawn from November	28.47	38.07
Balance of Wages Paid		$ 90.13
Received Payment		

(signed)

ASPROGERAKAS—Fireman, Rate of wages £30–0–0 per month

SEPTEMBER 16–20		
Withholdings	£15– 0– 0	
	1– 4– 1	
	£13–15–11	
£13–15–11 =		
Advances		$55.20
Cigarettes	$100.00	
	8.64	108.64
	Overdrawn	$ 53.44
OCTOBER		
Withholding	£30– 0– 0	
	2– 8– 1	
	£27–11–11	

£27–11–11 =		$110.40
Advance	$150.00	
Balance owing from September	53.44	203.44
	Overdrawn	$ 93.04
NOVEMBER	£30– 0– 0	
Withholding	2– 8– 1	
	£27–11–11	
£27–11–11 =		$110.40
Overtime		7.20
		$117.60
Balance owing from October		93.04
	Balance Wages Due	$ 24.56
DECEMBER	£30– 0– 0	
Withholding	2– 8– 1	
	£27–11–11	
£27–11–11 =		$110.40
Overtime		12.40
		$122.80
Balances of wages due from November		24.56
		$147.36
Less: Cigarettes		9.60
	Balance of Wages Paid	$137.76

Received Payment

(signed)

VORDONIS—Sailor, Rate of wages £28–0–0 per month

AUGUST 5–31	£24– 5– 4	
Withholding	1–19– 8	
	£22– 5– 8	
£22–5–8 =		$ 89.13
Overtime		14.00
		$103.13
Less: Cigarettes	$ 9.36	
Advance	152.10	161.46
	Overdrawn	$ 58.33
SEPTEMBER	£28– 0– 0	
Withholding	2– 6– 8	
	£25–13– 4	
£25–13–4 =		$102.70
Overtime		8.80
		$111.50
Less: Cigarettes	$ 8.64	
Advances	258.33	266.97
	Overdrawn	$155.47
OCTOBER	£28– 0– 0	
Withholding	2– 6– 8	
	£25–13– 4	
£25–13–4 =		$102.60
Overtime		14.00
Extra		15.00
		$131.60
Advance	$100.00	
Balance owing from September	155.47	255.47
	Overdrawn	$123.87

NOVEMBER	£28– 0– 0	
Withholding	2– 6– 8	
	£25–13– 4	
£25–13–4 =	$102.60	
Overtime	9.20	$111.80
Balance owing from October		123.87
	Overdrawn	$ 12.07
DECEMBER	£28– 0– 0	
Withholding	2– 6– 8	
	£25–13– 4	
£25–13–4 =		$102.60
Overtime		13.20
		$115.80
Less: Cigarettes	$ 9.60	
Balance owing from November	12.07	21.67
		$ 94.13

Received Payment

(signed)

DEPOSITIONS

L. CAPPARIS: P. 106:

(By MR. MOREWITZ:)

"Q. And you see here an imprint showing less deductions, advances at the beginning of the voyage and advances taken during the voyage, did you not?

A. Yes. The payroll that my company hands me, they state the salary, the monthly wages, the monthly taxes. Then they state the balance, clear balance, whatever is due. Next to it there is a place where to sign where he received his money. That's for the advances. I can keep them in any kind of note book that I want to keep them."

P. 112:

"Q. Are those in your handwriting or the handwriting of any of your officers?

A. Those are my handwriting. This here is the mates'.

Q. Will you read from each one of those slips the dates and the amounts of the advances?

A. Not dates but months. 'September, Athanasios Sardis received $200 in the United States'. I don't remember the exact date. They are accounted for his salary for the month of September.

A. $200.00.

Q. That's the same $200.00 you just referred to, isn't it? That's the first $200.00?

P. 113:

A. That's for the wages of September.

Q. How about the next one?

A. The same name, $102.10. The two dollars may be some balance from the previous account. For the month of August.

Q. How can you have one for August when he didn't go aboard until September?

A. They bought some cigarettes on board the steamer when they were coming from France.

Q. That's during the time they were aboard as supernumeraries, I suppose?

A. Yes, sir.

Q. And the time you don't want to pay them any wages for?

A. Not that I don't want to pay them but they had no right of wages because they signed an agreement.

Q. What are the next advances?

A. I did not need them. If they wanted to be paid, they shouldn't have signed the agreement. When I took them oabr, I had a complete crew. I did not need them.

Q. Now, what is the third time you made the advances to him?

A. January.

Q. How much?

A. $200.00.

Q. And what's the next time, if any?

A. There is no other. The others are for settlement of his account."